

### **REMARKS**

Applicants respectfully request the Examiner to reconsider the present application in view of the foregoing amendments to the claims and the following remarks.

#### **Status of the Claims**

Upon entry of the present amendment, claims 1-4, 6-9 and 11-12 will be pending in the application. Claims 5 and 10 have been cancelled herein. Claims 1 and 7 have been amended herein. Claim 12 has been added. Support for the recitations in claim 1 and 12 can be found in claim 5 as originally filed. Claim 7 was amended to be rewritten into independent form. No new matter has been added. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

#### **Issues under 35 U.S.C. § 101 and § 112**

The Examiner has rejected claim 10 under 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph, for being an improper “use” claim. Applicants have cancelled claim 10 herein, which renders these rejections moot.

#### **Issues under 35 U.S.C. § 102(b)**

The Examiner has rejected claims 1-3, 6 and 11 under 35 U.S.C. § 102(b) as being anticipated by Hirota et al. ‘893 (US 4,479,893). Applicants respectfully assert that Hirota et al. ‘893 do not disclose each and every aspect of independent claim 1. Therefore, Hirota et al. ‘893 do not anticipate or render obvious claim 1.

The additive as recited in claim 1 contains a monoester and a diester at a specified ratio. The monoester improves the dispersibility of the cement. The diester improves the flowing of a cement mixture.

As amended, claim 1 recites, *inter alia*, “an antifoaming agent.” This element recites the subject matter of claim 5, which the Examiner has indicated to be allowable subject matter.

In stark contrast, Hirota et al. '893 fail to teach or suggest "an antifoaming agent." In fact, Hirota et al. '893 teach a shampoo, which is required to foam.

In view of the above, Applicants respectfully submit that the present invention is novel and nonobvious over Hirota et al. '893. Thus, withdrawal of the rejection is respectfully requested.

**Allowable Subject Matter**

Applicants acknowledge the indication of allowable subject matter of claims 4-5 and 7-9. Applicants have incorporated the allowable subject matter of claim 5 into independent claim 1 and have rewritten claim 7 into independent form. All pending claims depend from either claim 1 or claim 7. As such, all pending claims are believed to be directed to allowable subject matter. Therefore, Applicants respectfully submit that this application is now in condition for allowance. An early reconsideration and Notice of Allowance are respectfully requested.

### CONCLUSION

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case clearly indicating that each of claims 1-4, 6-9 and 11-12 are allowed and patentable under the provisions of title 35 of the United States Code.

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Reg. No. 58,258, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§ 1.16 or 1.147; particularly, extension of time fees.

Dated: JUL 10 2008

Respectfully submitted,

By 

John W. Bailey

Registration No.: 32,881

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant